

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.629 of 2018

1. Raj Kumar Nath Tiwari, son of Uma Shankar Nath Tiwari, resident of Village- Malkauli, Ward No. 1, Police Station- Bagha, District- West Champaran.
2. Narayan Ram, son of Late Lagan Ram, resident of Village- Koeri Tola, Police Station Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through The Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna.
2. The Chief Engineer, Water Resources Department, Balmiki Nagar, District West Champaran.
3. The Superintending Engineer, Tirhut Canal Circle, Bettiah, West Champaran.
4. The Superintending Engineer, Tirhut Canal Circle, Raxaul, East Champaran.
5. The District Magistrate, Bettiah, District West Champaran.
6. The Executive Engineer, Triveni Canal Division, Narkatiyaganj, West Champaran.
7. The Executive Engineer, Tirhut Canal Division-2, Bettiah, West Champaran.
8. The Sub- Divisional Officer, Sub Division Maniyari, Water Resources Department, Police Station Sikarpur, District West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rupak Kumar, Advocate Mr.Jitendra Kumar, Advocate
For the Respondent/s	:	Mr.Sumant Kumar Singh, AC to GA2

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 12-09-2022 Heard Learned Counsel for the petitioners and the learned State Counsel.

The petitioners have approached this Court being aggrieved by regularization under Office order dated 09.04.2016 issued by the Chief Engineer, Water Resource Department, Balmiki Nagar, Motihari, insofar as the regularization has been



ordered from the date of the Office order instead of the date of recommendation dated 09.02.2011.

It is submitted that once the District Committee had recommended the petitioners' regularization on 09.02.2011 the Authorities were required to immediately extend the benefit of regularization. The delayed regularization by Office order dated 09.04.2016 cannot be to the prejudice of the petitioners.

The learned Counsel for the State has submitted that Resolution No.639 dated 16.03.2006 clearly specifies that period of service as work charge employee is not to be treated or counted as regular service and that regularization can be only with effect from the date on which the Office order is issued.

Having considered these rival submissions and going through the records, this Court would find that the petitioners had approached this Court by filing CWJC No.6805 of 2014 seeking implementation of the recommendation dated 09.02.2011 of the District Selection Committee in favour of petitioners' regularization. The State in the said proceedings had taken a stand that roster clearance was required to be obtained before implementation of the recommendation. This Court had rejected the stand of the State in this regard by following observation:-

“Counsel for the petitioners further



submits that the queries, which is being made now is an after thought by the authorities of the Water Resources Department and is a misplaced exercise because they do not take any stand in the counter affidavit that whatever has been decided and recommended by the District Selection Committee is vitiated or is a non est exercise. There cannot be any occasion for sitting in appeal over the decision of the District Selection Committee.

The right of the petitioners created in their favour by virtue of the decision contained in Annexure- 2 has to fruitify unless the decision of the Selection Committee is annulled by any other competent authority, which does not seem to be the case. Some kind of smokescreen is being created against the recommendation when nothing has been said with regard to correctness of the recommendation as such.

In view of the same, the respondents are directed to implement the recommendation of the Selection Committee contained in Annexure- 2 within a reasonable time frame, preferably within a period of three months from the date of production of a copy of this order.

Writ application stands allowed in terms of the above.”

Further in the contempt proceedings, arising out of the same writ proceedings, this Court has held the following



observation:-

“Contempt application stands disposed of now in view of the decision taken and brought on record as Annexure-A. If the petitioners are not satisfied with any of the clauses therein, they may take recourse to law, that is not to certify about the correctness or otherwise of such claim which will be tested on its own merit.”

The plea of the State that there was some action required to be taken after the recommendation was thus negated by this Court in CWJC No. 6805 of 2014. At the same time this Court would find that by the order on the petitioners’ earlier writ proceedings, quoted above, three months time was granted to the respondents for implementing the recommendation dated 09.02.2011, which recommendation has finally been implemented after another extra four months, i.e. in April 2016, that also during pendency of the contempt proceedings arising out of MJC No.77 of 2016. In between it appears that the Authorities had come out with an order dated 21.03.2016 rejecting the petitioner’s regularization. They have thereafter canceled the order dated 21.03.2016 and directed for regularization by a composite order dated 09.04.2016.

The learned counsel for the petitioners submits that



since the petitioners could not be prejudice by the delay in implementation of the Court's decision in CWJC No.6805 of 2014, the Court in the contempt proceedings had taken note of the petitioners' dissatisfaction with the order of regularization in this regard and left it open to the petitioners to take recourse to law. It is in compliance of this liberty that the instant writ proceedings have been instituted.

In view of the above noted facts and circumstances, the claim for giving effect to the regularization with effect from the date of recommendation dated 09.02.2011, in the opinion of this Court is not sustainable inasmuch as the petitioners, if at all, wanted the benefit with effect from the date of recommendation they were required to raise the same in CWJC No.6805 of 2014. Even if it had been raised it is not apparent from the order dated 08.09.2015 passed there upon. There is also no direction to this effect in the earlier writ proceedings. On the contrary three months time has been granted for implementing the recommendation. The same has been implemented after a delay of about four months, which of course the petitioners cannot be made to suffer.

In view of the liberty granted to the petitioners in the contempt proceedings for raising this issue, and the issue now



having been raised in the instant writ proceedings, this Court would reject the petitioner's prayer for the benefit of regularization with effect from the date of recommendation, but uphold the claim with effect from 08.12.2015, i.e. the period three months after the order dated 08.09.2015 passed in CWJC No.6805 of 2014. Since the respondents have not justified such delay, in spite of the Court's order, the Authorities are directed to grant the petitioners benefit of regularization with effect from 08.12.2015 within eight weeks from the date of receipt/production of a copy of this order.

Writ application is allowed to the above extent.

(Madhuresh Prasad, J)

shashank/-

U			
---	--	--	--

